

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PEOPLE FOR THE ETHICAL TREATMENT
OF ANIMALS, INC.,

Plaintiff,

v.

MICHAEL K. YOUNG, in his official capacity
as President of Texas A&M University,

Defendant.

Civil Action No. 18-cv-1547

PLAINTIFF'S APPENDIX OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Plaintiff PETA, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, files this Statement of Facts in support of its Motion for Summary Judgment.

Social media

1. Billions of people use social media platforms to communicate with each other, engage with news content, and share information. *See* Answer (ECF Dkt 35) ¶ 6.¹

2. In 2016, a United Nations study reported that 152 member states out of 193 (roughly 80%) include links to social media and other networking features on their national websites. *See United Nations E-Government Survey 2016*, U.N. Sales No. E.16.II.H.2, at p. 65.² Twenty percent of member states reported that social media engagement led to new policy decisions and services. *Id.* at 68.

¹ The Answer (ECF Dkt. 35) corresponds to the same paragraphs of the Amended Complaint (ECF Dkt. 17).

² Available at <http://workspace.unpan.org/sites/Internet/Documents/UNPAN97453.pdf>.

3. Federal agencies have registered more than 10,000 social media profiles with the United States Digital Service. *See* <https://usdigitalregistry.digitalgov.gov/>.

4. All 100 Senators and the overwhelming majority of Representatives use social media. *See* Congressional Research Service, *Social Media in Congress*, R44509 (May 2016), at p. 2.³

5. In a Congressional Management Foundation survey of members of Congress and their staff, 76% of respondents felt that social media enabled more meaningful interactions with constituents; 70% found it made them more accountable to their constituents; and 71% said constituent comments on social media would influence an undecided lawmaker. *See* Walters Decl. Exh. 1 (Congressional Management Foundation, *#SocialCongress2015*) at pp. 10-11, 15.⁴

Facebook

6. Facebook is a social media platform with over 2.2 billion users worldwide, including 185 million daily users in the United States and Canada. *See* Answer (ECF Dkt. 35) at ¶ 13. *See also* Walters Decl. Exh. 2 (Facebook, Press Release: Facebook Reports First Quarter 2018 Results) at p. 1;⁵ Exh. 3 (Facebook, Earnings Slides: Facebook Q1 2018 Results) at p. 2.⁶ Facebook allows individual users to create a “profile” under their name and photograph where they can curate their online presence by posting content on their “timeline,” including text, photos, videos, and external links. Users are able to “friend” one another, which enables them to see and comment

³ Available at <https://fas.org/sgp/crs/misc/R44509.pdf>.

⁴ Available at http://www.congressfoundation.org/storage/documents/CMF_Pubs/cmf-social-congress-2015.pdf.

⁵ Available at <https://investor.fb.com/investor-news/press-release-details/2018/Facebook-Reports-First-Quarter-2018-Results/default.aspx>.

⁶ Available at [https://s21.q4cdn.com/399680738/files/doc_financials/2018/Q1/Q1-2018-Earnings-Presentation-\(1\).pdf](https://s21.q4cdn.com/399680738/files/doc_financials/2018/Q1/Q1-2018-Earnings-Presentation-(1).pdf)

on each other's posts. They may do so in their "news feed," the home-screen for all Facebook users that displays a ticker-tape of posts and activity based on an algorithm that determines interest and relevancy for individual users. *See* Answer (ECF Dkt. 35) ¶ 14. *See also* Walters Decl. Exh. 4 (Facebook Help Center, Your Profile and Settings);⁷ Exh. 5 (Facebook Help Center, Friending);⁸ Exh. 6 (Facebook Help Center, Your Home Page).⁹

7. Facebook has a "Town Hall" feature which, according to the "Help" section of Facebook, "is a place on Facebook for civic discovery and engagement where you can: See the names and contact information of local, state and federal government officials representing you. Contact your government officials directly through Facebook. Connect with your government officials by following them." *See* Answer (ECF Dkt. 35) ¶ 7. *See also* Walters Decl. Exh. 7 (Facebook Help Center, What is Town Hall?) (stating that "Town Hall" is "a place on Facebook where people can: Find, follow and contact their government officials. Find, follow and contact government agencies. See a feed of what their government is posting on Facebook. This tool is a part of Facebook's efforts to help build civically engaged communities and make it easier for people to have a voice in government.").¹⁰

Facebook Pages

8. Facebook allows individuals and organizations to create their own "Pages." Pages offer different privacy, publishing, and content moderation functionality than individual user profiles. Generally speaking, Pages are more public and less private. Using default settings, any member of the public is able to view posts on an organization's Page as well as comment on that

⁷ Available at https://www.facebook.com/help/239070709801747/?helpref=hc_fnav.

⁸ Available at https://www.facebook.com/help/1540345696275090?helpref=hc_global_nav.

⁹ Available at https://www.facebook.com/help/753701661398957/?helpref=hc_fnav.

¹⁰ Available at https://www.facebook.com/help/278545442575921?helpref=faq_content.

Page. Users may also “follow” a Page, in order to receive notifications about activity on the Page or see Page posts in their news feed. Users can also “like” a Page, which will be viewable on their own user profile and automatically follow the organization’s Page. *See Answer (ECF Dkt. 35) ¶ 15. See also Walters Decl. Exh. 8 (Facebook Help Center, Create and Manage a Page);*¹¹ Exh. 9 (Facebook Help Center, Like and Interact with Pages) at p. 1.¹²

9. All Pages on Facebook are public by default. To remove a Page from public view, the administrator of the Page must “unpublish” it. Organizations can put age and country restrictions on a Page to limit who can view it. Organizations can also ban individual Facebook users from posting on, commenting on, and liking their Page, but banning will not prevent users from viewing the Page. *See Answer (ECF Dkt. 35) ¶ 16. See also Walters Decl. Exh. 8 (Facebook Help Center, Create and Manage a Page) at p. 3; Walters Decl. Exh. 10 (Facebook Help Center, Banning and Moderation) at pp. 4-5.*¹³

10. Organizations can post text, photo, and video content on their Page, as well as links to outside content. *See Answer (ECF Dkt. 35) ¶ 17. See also Walters Decl. Exh. 11 (Facebook Help Center, Publishing).*¹⁴

Visitor posts, comments, and reactions on Facebook pages

11. Individual Facebook visitors can express themselves on Facebook Pages in three distinct ways:

a. They can publish their own posts to an organization’s Page. These posts are located under the “Visitor Posts” tab. Visitor posts include original content placed specifically

¹¹ Available at https://www.facebook.com/help/135275340210354/?helpref=hc_fnav.

¹² Available at https://www.facebook.com/help/1771297453117418/?helpref=hc_fnav.

¹³ Available at https://www.facebook.com/help/248844142141117/?helpref=hc_fnav.

¹⁴ Available at https://www.facebook.com/help/182487968815949/?helpref=hc_fnav.

on the Page by third parties, as well as instances where users “tag” (or link to) the organization on their own user profiles. Organizations can disable visitor post functionality, or require manual administrator review and prior approval of every visitor post before it is viewable to the general public. *See* Answer (ECF Dkt. 35) ¶ 17. *See also* Exh. 9 (Facebook Help Center, Like and Interact with Pages) at pp. 1-2; Exh. 10 (Facebook Help Center, Banning and Moderation) at pp. 1-2.

b. They can “comment” under posts on Facebook Pages, including both posts created by Page administrators and posts created by visitors. *See* Answer (ECF Dkt. 35) ¶ 17. *See also* Exh. 9 (Facebook Help Center, Like and Interact with Pages) at pp. 1-2.

c. They can “react” to a post or a comment. For example, they can click on a “thumb up” symbol, which typically means that the visitor “liked” the post or comment. Posts and comments display the number of times users have reacted. *See* Walters Decl. Exh. 12 (Facebook Help Center, Insights) at pp. 1-2.¹⁵

12. Facebook Page administrators have at least three distinct ways to prevent visitors from publishing posts or comments on the Page:

a. They can establish a customized list of “blocked” words. If a blocked word appears in a visitor’s post or comment, the entire post or comment will automatically and immediately be hidden from public view of the Page. *See* Answer (ECF Dkt. 35) ¶ 18. *See also* Exh. 10 (Facebook Help Center, Banning and Moderation) at p. 1.

b. They can turn on Facebook’s generalized profanity filter, which will block posts and comments containing certain profanity. *See* Answer (ECF Dkt. 35) ¶ 18. *See also* Exh. 10 (Facebook Help Center, Banning and Moderation) at p. 1.

¹⁵ Available at https://www.facebook.com/help/794890670645072/?helpref=hc_fnav.

c. They can manually block individual posts and comments. *See Answer (ECF Dkt 35) ¶ 18. See also* Exh. 10 (Facebook Help Center, Banning and Moderation) at p. 3.

Texas A&M University

13. Texas A&M University (“TAMU”) is a public research university, with its primary location in College Station, Texas. *See Answer (ECF Dkt. 35) ¶ 5.*

14. Defendant Michael K. Young is TAMU’s President. *See Answer (ECF Dkt. 35) ¶¶ 1, 5.* In his official capacity, he has authority over TAMU policies and practices. *Id.* at ¶ 5.

TAMU’s Facebook Page

15. TAMU maintains a Facebook Page: <https://www.facebook.com/tamu/>. *See Answer (ECF Dkt. 35) ¶¶ 19, 21.* It has over 583,000 followers, and has received over 608,000 “likes.” *Id.* at ¶ 19.

16. TAMU can post text and other media on the timeline of its Facebook Page. On the left of its Page is a list of content such as Home, Posts, and Photos. The Home section lists only TAMU-generated media. *See Answer (ECF Dkt. 35) ¶¶ 19-20.*

17. On the timeline of its Facebook Page, TAMU regularly posts information about a wide variety of University topics. These include educational opportunities, research advances, and University athletics. TAMU also posts profiles about students and other members of the TAMU community, and photographs taken by students studying abroad. *See Answer (ECF Dkt. 35) ¶¶ 19-20.*

Visitor expression on TAMU’s Facebook page: In general

18. Visitors to TAMU’s Facebook page can express themselves on that Page in three distinct ways that other visitors can view:

a. They can publish posts in the Page’s “Posts” section. *See Answer (ECF Dkt. 35) ¶ 20.*

b. They can comment on posts, including both University-created posts in the “Home” section, and visitor-created posts in the “Posts” section. *See Answer (ECF Dkt. 35) ¶¶ 20, 24.*

c. They can react to posts and comments. *See Answer (ECF Dkt. 35) ¶ 24.*

19. TAMU has a social media policy, a true and correct copy of which is included as Exhibit 13 to the Walters Decl. *See Answer (ECF Dkt. 35) ¶ 25. See also <https://www.tamus.edu/marcomm/socialmedia/public/>.*

20. TAMU’s social media policy allows the general public—including current students, prospective students, alumni, and non-affiliated persons interested in the University—to post, comment, and react on TAMU’s Facebook Page. *See Answer (ECF Dkt. 35) ¶ 28.*

21. TAMU’s social media policy states narrow exceptions to this general public access. These exceptions are for content that: violates the terms of service; contains personal identifying information or sensitive personal information, as defined in Tex. Code Bus & Com. §521.001 et. seq.; contains offensive terms that target protected classes; is threatening, harassing, or discriminatory; incites or promotes violence or illegal activities; contains information that reasonably could compromise public safety; advertises or promotes a non-affiliated commercial product or service; promotes or endorses political campaigns or candidates; or violates a trademark, copyright, or other law. *See Walters Decl. Exh. 13 (TAMU’s social media policy) at p. 1-2.*

22. According to TAMU’s social media policy: “Postings from the public on A&M System or its members’ social media sites become public record and may be shared on A&M

System websites.” *See* Answer (ECF Dkt. 35) ¶ 26. *See also* Walters Decl. Exh. 13 (TAMU’s social media policy) at p. 2 (“This information may be subject to public information requests.”).

23. Exhibit 14 to the Walters Declaration is the “Settings” established by TAMU regarding its Facebook Page. *See* Answer (ECF Dkt. 35) ¶¶ 38-40. TAMU provided this document to PETA on June 20, 2018, in response to PETA’s request under the Texas Public Information Act. *Id.* This exhibit is not dated, and may reflect the settings at any point from January 19, 2018 (when PETA sent its request) to June 20, 2018 (when TAMU responded). *Id.* These settings may or may not reflect TAMU’s current Facebook Page settings. *Id.*

24. TAMU’s settings make it easy for everyone to see and publish information on its Facebook Page:

a. The “Visitors Posts” setting for TAMU’s Facebook Page is: “Anyone can publish to the Page,” and “[a]nyone can add photos and videos to the Page.” *See* Walters Decl. Exh. 14 (TAMU’s Facebook Page “Settings”).

b. The “News Feed Audience and Visibility for Posts” setting for TAMU’s Facebook Page is: “The ability to narrow the potential audience for News Feed and limit visibility on your posts is turned off.” *See* Walters Decl. Exh. 14 (TAMU’s Facebook Page “Settings”).

c. The “Tagging Ability” setting for TAMU’s Facebook Page is: “Other people can tag photos posted on my Page.” *See* Walters Decl. Exh. 14 (TAMU’s Facebook Page “Settings”).

d. The “Country Restrictions” and “Age Restrictions” settings for TAMU’s Facebook Page are: “Page is visible to everyone.” *See* Walters Decl. Exh. 14 (TAMU’s Facebook Page “Settings”).


Visitor expression on TAMU's Facebook Page: Concerning TAMU decisions

25. Many visitor comments and posts address TAMU decisions. *See* Answer ECF Dkt. 35) ¶ 24.

26. On March 28, 2018, TAMU posted about a University residential program for students on the autism spectrum. A visitor published the following comment below that post. *See* Answer (ECF Dkt. 35) ¶ 24.




27. On July 19, 2017, TAMU posted about a University cancer research program that involved a dog. Visitors published the following comments below that post. *See* Answer (ECF Dkt. 35) ¶ 27.



Texas A&M University
 July 19, 2017 · 🌐

Texas A&M scientists & MD Anderson Cancer Center doctors have a surprising partner in their fight against brain cancer - Sadie, a 9-year-old French Bulldog!





Sadie was recently diagnosed with the same type of brain tumor that humans can get. She's helping scientists better understand how to beat cancer in man and man's best friend: <http://tx.ag/mdsadie>




A Dogged Pursuit of Aggressive Brain Cancer

Dogs are helping researchers better understand the biology of brain tumors in hopes of developing better treatments for high-grade gliomas

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107 Shares



Sammie Buchanan Lisa Brown Buchanan Cathy Carbajal Buchanan speaking of brain tumors... really cool research from A&M! 🙌👍

Like · Reply · 38w

 4



Lisa Brown Buchanan Very very interesting!!

Like · Reply · 38w

 1



Cathy Carbajal Buchanan Love Aggie ingenuity!!

Like · Reply · 38w

 1



Kathy Pitts what are you doing to her???

Like · Reply · 34w

 1

28. A visitor published the following post on TAMU's Facebook Page. *See Answer (ECF Dkt. 35)* ¶ 29.



30. The following post appears in TAMU's Facebook page. *See Answer (ECF Dkt. 35)* ¶ 30.



PETA's campaign against TAMU's dog lab

31. TAMU operates a laboratory where researchers study therapies for Duchenne Muscular Dystrophy ("DMD") in canines with the disease. *See Answer (ECF Dkt. 35) ¶ 32.*

32. In 2016, PETA began an advocacy campaign against TAMU's dog lab. This campaign has included, but has not been limited to, letters to government officials and funding agencies, protests of Board of Regents' meetings, Twitter livestreams of its protests at TAMU events, and a video by political commentator Bill Maher. *See Answer (ECF Dkt. 35) ¶ 33.*

TAMU's exclusion of PETA from its Facebook Page

30. TAMU automatically blocks selected words from its Facebook page. *See Answer (ECF Dkt. 35) ¶¶ 44-45.* TAMU admits these include:

- a. "PETA," *id.* at ¶ 1 & 46; and

b. “lab,” *id.* at ¶ 1.

31. The “Settings” for TAMU’s Facebook Page likewise show that TAMU automatically blocked five words associated with PETA’s campaign against TAMU’s dog lab: “peta,” “lab,” “abuse,” “abusers,” and “md.” *See* Walters Decl. Exh. 14 (TAMU’s Facebook Page “Settings”).

32. Of the remaining 26 blocked words in TAMU’s “Settings”:

a. Twelve are related to automated spam: “\$,” “apartment,” “bit card,” “giftcard,” “ipaad,” “ipad2,” “ipadss,” “jetblue,” “job,” “pad,” “pads,” and “sale.” *Id.*

b. Seven are profanity: “a\$\$,” “ass,” “bastard,” “bastards,” “hell,” “penis,” and “shit.” *Id.*

c. The other seven are “aggy,” “hook,” “hook em,” “hookem,” “illuminati,” “jersey,” and “ms.” *Id.*

33. TAMU’s use of the automatic filter led to the removal of PETA generated content from the TAMU Facebook Page, as well as the removal of content mentioning PETA or content referencing PETA’s anti-dog lab campaign.

34. When certain PETA-generated posts were not blocked by TAMU’s automatic filters, and appeared on TAMU’s Facebook Page, TAMU manually blocked them from its Page. *See* Answer (ECF Dkt. 35) ¶ 43.

DATED: March 27, 2019

Respectfully submitted:

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